

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on
Agriculture and
Insurance
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

INFORMATION COLLECTED BY COMMITTEE
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ **

Name:

➤ Clearinghouse Rules ... CRule

➤ **

➤ Hearing Records ... HR (bills and resolutions)

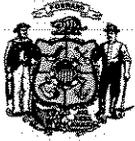
➤ **05hr_ab1052_SC-AI_pt01**

➤ Miscellaneous ... Misc

Perlich, John H.

From: Sen.Robson
Sent: Thursday, March 02, 2006 1:54 PM
To: *Legislative Senate Democrats; *Legislative Senate Republicans; *Legislative Assembly Democrats; *Legislative Assembly Republicans
Subject: Insurance Commissioner's Analysis of SB617/AB1052
Attachments: AB 1052memo 30206 0611.Doc

The Insurance Commissioner's office asked me to forward the attached analysis of SB 617/AB 1052 to all legislators. The Insurance Commissioner remains opposed to the legislation, but supports changes to the administrative rules that were agreed upon by the Joint Committee for Review of Administrative Rules.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

March 2, 2006

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: information@oci.state.wi.us
Web Address: oci.wi.gov

To: Members, Wisconsin Legislature

From: Jorge Gomez, Commissioner of Insurance

Subject: Comparison of AB 1052, as proposed to be amended, to OCI's consumer protection rule (ch. INS 9, Wis. Adm. Code), as affected by JCRAR action

AB 1052 remains a fatally flawed proposal which will not achieve the stated goal of protecting consumers. The following summarizes the most prominent areas where AB 1052, as amended, will deny or limit consumer access to preferred provider plan covered care compared to OCI's rule as affected by JCRAR March 1, 2006 action:

- **AB 1052, as amended, allows an insurer to restrict the providers available under a preferred provider plan to a primary care provider and a physician specializing in obstetrics and gynecology. The proposed legislation appears to allow preferred provider plans to deny enrollees access to treatment by other providers on an in-panel basis, including by in-panel specialists, except to a specialist in obstetrics and gynecology. Cardiologist, pulmonary specialists, and urologist are a few of the specialist that are among the provider types not**

OCI'S CH. INS 9 rule requires an insurer to have adequate participating providers, including all types of specialists, to provide covered benefits within usual medical travel times within the community norms and sufficient number and type of all types of participating providers to adequately deliver all covered services. This would include the services of specialist physicians. Cardiologists, pulmonary specialists, and urologists are a few of the many types of providers that are omitted by the bill

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, allows an insurer to cover only 50% of charges for off-panel care not otherwise excluded by separate policy deductibles and copays. The proposed legislation allows the insurer to apply these substantial percentage reductions in coverage for off-panel care without giving the consumer any notice at the time of sale.**

OCI'S CH. INS 9 rule allows a preferred provider plan to limit its coverage to less than 60% (but not less than 50%) but only if the insurer gives prominent notice to the consumer of the very limited off-panel coverage at the time of sale and in policy information provided to the enrollee.

JCRAR: Affirmed OCI's rule

- **AB 1052, as amended, allows an insurer to apply, without restriction, higher deductibles and copays to off-panel care. This reduction in coverage for off-panel care is in addition to the coinsurance reduction (described above) of up to 50%. The proposed legislation allows an insurer to apply these substantially higher deductibles and copays without giving the consumer any notice at the time of sale.**

OCI'S CH. INS 9 rule also permits insurers to apply a separate higher policy deductible and copay to off-panel care but it:

- Requires the insurer to give prominent notice to the consumer of the separate, higher, off-panel deductibles and copays at the time of sale and in the policy information provided to the enrollee.
- Places maximum limits (at a very high level that gives insurers significant flexibility) on separate off-panel deductibles and copays that ensure at least some minimum level of off-panel coverage is available.

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, allows an insurer to reduce its percentage of covered off-panel charges to a percentage that is up to 40% lower than the percentage coverage for in-panel care. The proposed legislation allows an insurer to apply the substantial higher coinsurance percentage to off-panel care without giving the consumer any notice at the time of sale.**

OCI'S CH. INS 9 rule also allows a preferred provider plan to reduce its percentage coverage of off-panel care charges by up to 40% but requires the insurer, if the percentage difference is more than 30%, to give the consumer prominent notice at the time of sale of the very limited off-panel coverage.

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, allows an insurer to give inconspicuous notice of significant restrictions on off-panel coverage. The insurer is required only to include a general and inconspicuous statement somewhere in its marketing material. The insurer is not required to provide even this inconspicuous statement at the time of sale and not required to include the statement in the coverage information issued to enrollees. (The bill drafting file indicates the words "prominent" and "conspicuous" were intentionally omitted.)**

OCI'S CH. INS 9 rule requires an insurer to give the consumer a prominent and informative notice at the time of sale and also in coverage information issued to enrollees. The notice required by OCI's rule includes significant information omitted in the proposed legislation, such as a warning that the enrollee may be billed for off panel provider charges excluded from coverage, including charges in excess of usual and customary charges.

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, allows an insurer to give inconspicuous notice to a consumer in its provider directory that an enrollee will have a significantly reduced level of coverage for off-panel ancillary provider services provided relating to an in-panel procedure or operations such as the services of an anesthesiologist, radiologists, pathologist or laboratory provided in support of the procedure. Off-panel ancillary provider participation in an in-panel procedure often dramatically increases the enrollee's uncovered expenses.**

OCI'S CH. INS 9 rule requires an insurer to give prominent notice to consumers in its provider directory that use off-panel ancillary providers to support an in-panel procedure will reduce covered expenses.

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, relieves the insurer of any responsibility to ensure an enrollee patient knows whether off-panel ancillary providers are participating in an in-panel procedure or operation.**

OCI'S CH. INS 9 rule requires that the enrollee patient must be told at the time of scheduling the non-emergency procedure whether participating ancillary providers are off-panel. This allows the enrollee patient to select the lowest cost providers to perform a procedure.

JCRAR: Suspended this portion of the rule, but scheduled for reconsideration in January, 2007 and asked Wisconsin Hospital Association to commit to work with OCI and other interested parties to develop an effective alternative. OCI committed to proceed with that process.

- **AB 1052, as amended, allows insurers to limit coverage of charges incurred for off-panel emergency treatment. The legislation allows an insurer to apply off-panel coverage limits for emergency treatment that the insurer determines is not required to stabilize the patient.**

OCI'S CH. INS 9 rule prohibits an insurer from applying off-panel coverage limits to any portion of charges for emergency treatment.

JCRAR: Suspended this portion of the rule, but invited OCI to re-promulgate with a minor modification.



CURT GIELOW

State Representative

Testimony on AB 1071 (LRB 4541)

Caps on Noneconomic Damages in Medical Malpractice

Senate Committee on Agriculture and Insurance – March 8th, 2006

Mr. Chair and members: Thank you for hearing this proposal this morning.

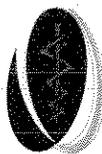
One issue briefly discussed during the course of this session's Speaker's Task Force on Medical Malpractice Reform was a 2005 decision of the Wisconsin Supreme Court regarding actions against healthcare providers when the plaintiff is developmentally disabled and is under the age of 18 at the time of the medical incident that is the basis of a lawsuit for malpractice. In the decision (*Haferman v St. Clare Healthcare Foundation Inc.*, 2005 WI 171) the court found that conflicts existed in the law regarding statutes of limitations in such cases.

The effect of *Haferman* has been to introduce uncertainty on the issue of statutes of limitation in cases where medical malpractice occurred AND the victim is under the age of 18 at the time of the medical incident AND is impaired in the ability to file suit, either through developmental disability or through imprisonment. This may be a small population of potential victims, but these people – these children – deserve the clarity of law.

AB 1071 would establish that all persons under age 18 seeking to bring action for medical malpractice must do so at whatever date of the following dates is latest:

- The person reaches age ten
- Within three years after the date of the injury (same as for all persons)
- Within one year after the injury was discovered or should have been discovered, but not more than five years after the date of the act or omission that caused the injury (same as for all persons)
- If the healthcare provider concealed from the person a prior act or omission that resulted in the injury, action must be brought within one year from the date that the patient discovers the concealment or should have discovered the concealment (same as for all persons)
- When a foreign object that has no therapeutic purpose has been left in a patient's body, action (if desired) must be brought within one year after the patient is aware or should have been aware of the presence of the foreign body (same as for all persons)

As you know, AB 1071 passed the State Assembly last week on a final vote of 59-37 with 2 paired. I hope the committee will recommend AB 1071 for passage. I'd be happy to take any questions. Thank you.



Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate Committee on Agriculture and Insurance
Senator Dan Kapanke, Chair

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations
Jeremy Levin – Government Relations Specialist

DATE: March 8, 2006

RE: **Support** for Assembly Bill 1071

On behalf of nearly 11,000 members statewide, thank you for this opportunity to provide written testimony supporting Assembly Bill 1071, creating statutes of limitations in medical liability cases dealing with developmentally disabled minors.

The Society supports this bill, as it is a reasonable way to respond to the Wisconsin Supreme Court's concerns in *Haferman v. St. Claire Healthcare Foundation*, which ruled that Wisconsin statutes do not contain a statute of limitations for developmentally disabled, mentally ill and imprisoned minors in medical liability cases, as those minors were specifically exempted from the statute of limitations applicable to other minors in Wis. Stat. sec. 893.56.

The legislative findings that accompanied sec. 839.56 at the time of its original enactment seem applicable to the proposed bill to give all minors the same statute of limitations. Specifically, the interests of mentally ill, developmentally disabled and imprisoned minors can be adequately and fully protected by adopting the same time limits as applies to adults, except in the case of very young developmentally disabled or mentally ill children. Those young children who are mentally ill, developmentally disabled or imprisoned would have until age 10 to bring a claim.

While the majority opinion in *Haferman* declined to rewrite the statutes or act in the place of the Legislature to provide a statute of limitations, it did not suggest that developmentally disabled minors require a longer statute of limitations than other minors. Meanwhile, the dissent concluded that developmentally disabled minors should have the same statute of limitations as other minors in sec. 893.56.

AB 1071 is a legislative fix that achieves the same result that the dissent in *Haferman* believed was reasonable. This solution will also eliminate a potential equal protection problem between developmentally disabled minors and other minors in medical liability cases, because all minors are treated the same. We ask for your support.

Thank you for your time and consideration. Please contact Mark Grapentine (markg@wismed.org) or Jeremy Levin (jeremyl@wismed.org) at (608) 442-3800 for further information.

Perlich, John H.

From: Rep.Gielow
Sent: Friday, March 03, 2006 11:32 AM
To: Sen.Kapanke
Cc: Perlich, John H.; Michaelsen, Mark
Subject: AB 1021

1071

Senator: I learn that you expect to receive in your committee the medical malpractice bills passed last night by the Assembly. I am pleased to learn that you plan to act on these bills.

I'd like to ask if you could add AB 1021 to the list of bills you will act on. AB 1021, the physician apology law, is closely related to issues of medical malpractice litigation and should be an easy vote for the committee and the Senate. I attach my Assembly committee testimony on AB 1021 for your review.

Thank you for your consideration of this issue.

Rep. Curt Gielow

Testimony on AB 1021 – Physician Apology Law

Assembly Committee on Judiciary

February 23rd, 2005

Thank you for taking time to hear AB 1021, the Physician Apology Law.

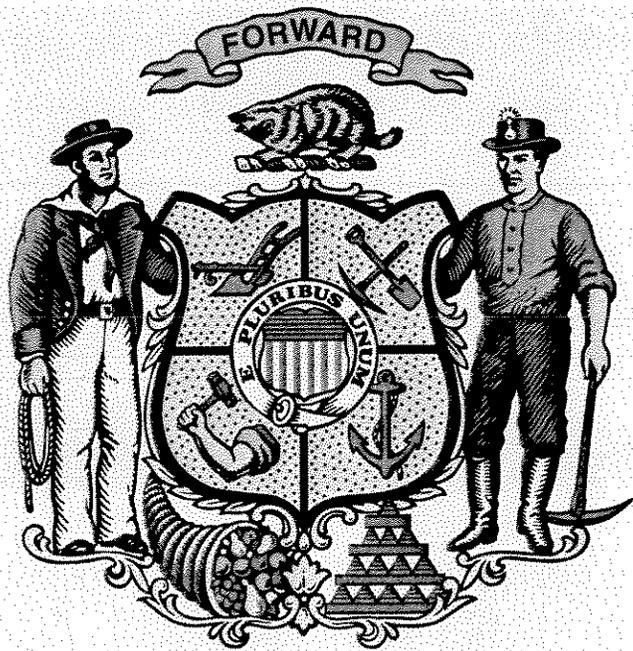
One conclusion that I have reached after years of work in medical management – and after chairing the Speaker's Task Force on Medical Malpractice this session – is that when a medical outcome is not fully successful, it should be possible for a physician or other medical professional to express sympathy to the patient and the patient's family without that human gesture being used against the practitioner in a future court proceeding. Therefore I have introduced AB 1021, a proposal to create an apology law, or an "I'm sorry law" in Wisconsin.

The purpose of an "I'm sorry law" or "apology law" is to encourage open communication between patients and physicians without fear of reprisal. "I'm sorry" laws protect health care providers who express sympathy to a patient for an unanticipated outcome from having such a statement used against the physician in a subsequent lawsuit.

At least sixteen states have enacted an "I'm Sorry" law for health care providers, including Arizona, Colorado, Georgia, Louisiana, Maine, Maryland, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Virginia, West Virginia, and Wyoming.

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

I believe AB 1021 is necessary to humanize medicine; the goal is to not hold physicians automatically culpable when all they are doing is expressing sympathy. I hope you will see this legislation as I do, and will vote to



Perlich, John H.

From: Stapleton Concord, Clare
Sent: Thursday, March 02, 2006 10:40 AM
Subject: AB1052
Attachments: AB 1052memo 30206 0611.Doc

Please find attached OCI's analysis of AB 1052 as amended and the remaining fatal flaws in the bill.

Clare Stapleton Concord, Deputy Commissioner
Office of the Commissioner of Insurance
State of Wisconsin
125 S. Webster Street
P.O. Box 7873
Madison, WI 53707-7873
Clare.Stapleton-Concord@oci.state.wi.us
Voice: (608) 267-1233 Fax: (608) 261-8579



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

March 2, 2006

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Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: information@oci.state.wi.us
Web Address: oci.wi.gov

To: Members, Assembly

From: Jorge Gomez, Commissioner of Insurance

Subject: **Comparison of AB 1052, as proposed to be amended, to OCI's consumer protection rule (ch. INS 9, Wis. Adm. Code), as affected by JCRAR action.**

AB 1052, as proposed to be amended, remains fatally flawed. It will not achieve the stated goal of protecting consumers. The following summarizes the most prominent areas where AB 1052, as amended, will deny or limit consumer access to preferred provider plan covered care compared to OCI's ch. INS 9 rule as affected by JCRAR March 1, 2006 action:

- **AB 1052, as amended, allows an insurer to restrict the providers available under a preferred provider plan to a primary care provider and a physician specializing in obstetrics and gynecology. This allows preferred provider plans to deny enrollees access to treatment by other providers on an in-panel basis.**

CH. INS 9 requires an insurer to have adequate participating providers, including all types of specialists, to provide covered benefits within usual medical travel times within the community norms and sufficient number and type of all types of participating providers to adequately deliver all covered services. This would include the services of specialist physicians. Cardiologists, pulmonary specialists, and urologists are a few of the many types of providers that are omitted by the bill

JCRAR: Affirmed OCI's rule.

- **AB 1052, as amended, allows an insurer to cover only 50% of charges for off-panel care not otherwise excluded by separate policy deductibles and copays. The proposed legislation allows the insurer to apply these substantial percentage reductions in coverage for off-panel care without giving the consumer any notice at the time of sale.**

CH. INS 9 allows a preferred provider plan to limit its coverage to less than 60% (but not less than 50%) but only if the insurer gives prominent notice to the consumer of the very limited off-panel coverage at the time of sale and in policy information provided to the enrollee.

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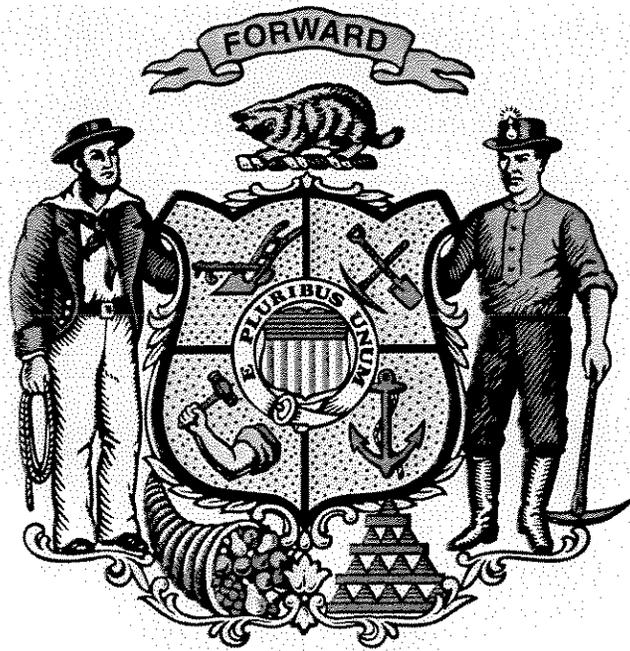
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JCRAR: Suspended this portion of the rule, but scheduled for reconsideration in January, 2007 and asked Wisconsin Hospital Association to commit to work with OCI and other interested parties to develop an effective alternative. OCI committed to that process.

- **AB 1052, as amended, allows insurers to limit coverage of charges incurred for off-panel emergency treatment. The legislation allows an insurer to apply off-panel coverage limits for emergency treatment that the insurer determines is not required to stabilize the patient.**

CH. INS 9 prohibits an insurer from applying off-panel coverage limits to any portion of charges for emergency treatment.

JCRAR: Suspended this portion of the rule, but invited OCI to re-promulgate with a minor modification.



Perlich, John H.

From: Rep.Nischke
Sent: Thursday, March 02, 2006 7:39 AM
To: *Legislative Everyone
Subject: Memo from Rep Nischke on AB 1052 and SB 617
Attachments: 2006-03-02 Memo to Legislators Fr Nischker RE AB 1052 as amended.pdf; WPPO Response to OCIs 2-21-06 memo.pdf

TO: MEMBERS & STAFF
 WISCONSIN STATE LEGISLATURE

From: Representative Ann Nischke, Chair
 Committee on Insurance

RE: Assembly Bill 1052 and Senate Bill 617 (As Amended by Committee)

In an effort to strengthen consumer protections and ensure the continued viability of Preferred Provider Organizations (PPO) in Wisconsin, I have introduced AB 1052 (SB 617) along with Senator Dan Kapanke.

As you know, a clearinghouse rule by the Office of the Commissioner of Insurance (OCI) affecting rule INS 9 was promulgated and a public hearing and subsequent committee objection was made. Working with different groups, we worked to further clarify the legislative intent of that INS 9 is derived from relating to specific issues raised.

Specifically Assembly Bill 1052 and Senate Bill 617 will help enhance consumer protections by:

- ▶ **Setting a Minimum Coverage Level for Out-of-network Benefits.** For consumers who wish to see non-participating providers, a co-insurance floor and maximum coinsurance differential is established by law.
- ▶ **Establishing and Clarifying the Access Requirements for PPO's.** This ensures that consumers have access to primary care providers and that OB/GYN services are available for female enrollees. However, it doesn't unnecessarily require PPO's to interfere with a doctors business operation.
- ▶ **Enhancing Consumer Disclosure on In-network Providers.** It would require PPO's to alert enrollees about certain providers who may not be included in the network, before the consumer buys the PPO plan.
- ▶ **Increasing Consumer Awareness about Defined Network Plans.** Most defined network plans provide coverage out of network. However, some consumers are unfamiliar with how these plans work. This bill would require the OCI to publish a guide to help better educate consumers about these plans.
- ▶ **Protecting Consumers from Insurers Who Might Try to Deny Care.** This bill prohibits plans from denying care just because the doctor or hospital may not be a participating provider.

► **Guaranteeing Emergency Care Access.** It's impossible for consumers to choose participating providers during a real emergency. This bill demands that these consumers not be penalized.

Assembly Bill 1052 and Senate Bill 617 will preserve the PPO market by:

► **Appropriately Regulating PPO's.** This bill recognizes the importance of PPO's to Wisconsin consumers. It properly enforces laws that PPO's must comply with, while providing greater guidance to insurance regulators.

Amendment by Committee:

In response to issues raised by the healthcare industry, the respective committees included an amendment to add greater clarity as to the intent of the original legislation.

First, an issue was raised relating to obstetrics and gynecology physician (OB/GYN) coverage. Working with Representative Sheldon Wasserman, we have included in part 5 of the amendment, clarifying language. In an email, Representative Wasserman has let us know that this satisfies the concerns raised.

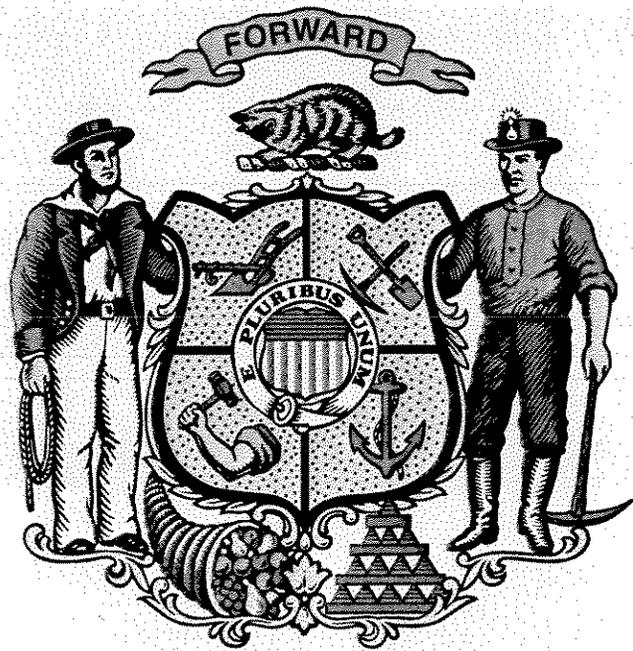
Second, issues were raised by the Wisconsin Association of Health Plans (WAHP) relating to a notice requirement mostly included in the part of the bill that deals with ss 609.20 and 609.23. Working with WAHP, this amendment in parts 1 to 4 and 6, seeks to better improve the issues raised by WAHP. WAHP has communicated to my office that this change improves this part of the bill as amended.

Concerns Raised by the Administration:

The administration also raised several concerns they say with the legislation. The amendment along with the attached response by the state PPO group adequately responds and makes adjustments to this legislation.

Thank you in advance for your consideration and thank you in advance for your support of this important pro consumer bill.

AMN:ASP



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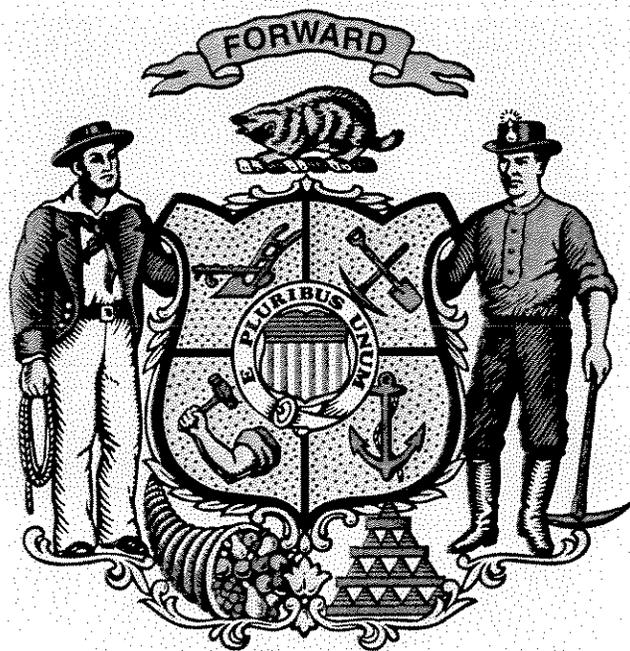
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Thank you in advance for your consideration and thank you in advance for your support of this important pro consumer bill.

AMN:ASP



Perlich, John H.

From: Smyrski, Rose
Sent: Tuesday, February 28, 2006 4:43 PM
To: Perlich, John H.
Subject: Amendment rationale

RE: Amendment (LRBa2457/3) to Assembly Bill 1052

In response to issues raised by the healthcare industry, I am proposing an amendment to add greater clarity as to the intent of the original legislation.

First, an issue was raised relating to obstetrics and gynecology physician(OB/GYN) coverage. Working with Representative Sheldon Wasserman, we have included in part 5 of the amendment, clarifying language. In an email, Representative Wasserman has let us know that this satisfies the concerns raised.

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Thank you in advance for your consideration of this amendment and this bill. If you have any questions, please feel free to contact my office or the committee clerk.